

PAPERWORK REDUCTION ACT SUBMISSION

Please read the instructions before completing this form. For additional forms or assistance in completing this form, contact your agency's Paperwork Clearance Officer. Send two copies of this form, the collection instrument to be reviewed, the supporting statement, and any additional documentation to: Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW, Washington, DC 20503.

1. Agency/Subagency originating request	2. OMB control number b. <input type="checkbox"/> None a. _____ - _____
3. Type of information collection (<i>check one</i>) a. <input type="checkbox"/> New Collection b. <input type="checkbox"/> Revision of a currently approved collection c. <input type="checkbox"/> Extension of a currently approved collection d. <input type="checkbox"/> Reinstatement, without change, of a previously approved collection for which approval has expired e. <input type="checkbox"/> Reinstatement, with change, of a previously approved collection for which approval has expired f. <input type="checkbox"/> Existing collection in use without an OMB control number For b-f, note Item A2 of Supporting Statement instructions	4. Type of review requested (<i>check one</i>) a. <input type="checkbox"/> Regular submission b. <input type="checkbox"/> Emergency - Approval requested by _____ / _____ / _____ c. <input type="checkbox"/> Delegated 5. Small entities Will this information collection have a significant economic impact on a substantial number of small entities? <input type="checkbox"/> Yes <input type="checkbox"/> No 6. Requested expiration date a. <input type="checkbox"/> Three years from approval date b. <input type="checkbox"/> Other Specify: _____ / _____
7. Title	
8. Agency form number(s) (<i>if applicable</i>)	
9. Keywords	
10. Abstract	
11. Affected public (<i>Mark primary with "P" and all others that apply with "x"</i>) a. <input type="checkbox"/> Individuals or households d. <input type="checkbox"/> Farms b. <input type="checkbox"/> Business or other for-profit e. <input type="checkbox"/> Federal Government c. <input type="checkbox"/> Not-for-profit institutions f. <input type="checkbox"/> State, Local or Tribal Government	12. Obligation to respond (<i>check one</i>) a. <input type="checkbox"/> Voluntary b. <input type="checkbox"/> Required to obtain or retain benefits c. <input type="checkbox"/> Mandatory
13. Annual recordkeeping and reporting burden a. Number of respondents _____ b. Total annual responses _____ 1. Percentage of these responses collected electronically _____ % c. Total annual hours requested _____ d. Current OMB inventory _____ e. Difference _____ f. Explanation of difference 1. Program change _____ 2. Adjustment _____	14. Annual reporting and recordkeeping cost burden (<i>in thousands of dollars</i>) a. Total annualized capital/startup costs _____ b. Total annual costs (O&M) _____ c. Total annualized cost requested _____ d. Current OMB inventory _____ e. Difference _____ f. Explanation of difference 1. Program change _____ 2. Adjustment _____
15. Purpose of information collection (<i>Mark primary with "P" and all others that apply with "X"</i>) a. <input type="checkbox"/> Application for benefits e. <input type="checkbox"/> Program planning or management b. <input type="checkbox"/> Program evaluation f. <input type="checkbox"/> Research c. <input type="checkbox"/> General purpose statistics g. <input type="checkbox"/> Regulatory or compliance d. <input type="checkbox"/> Audit	16. Frequency of recordkeeping or reporting (<i>check all that apply</i>) a. <input type="checkbox"/> Recordkeeping b. <input type="checkbox"/> Third party disclosure c. <input type="checkbox"/> Reporting 1. <input type="checkbox"/> On occasion 2. <input type="checkbox"/> Weekly 3. <input type="checkbox"/> Monthly 4. <input type="checkbox"/> Quarterly 5. <input type="checkbox"/> Semi-annually 6. <input type="checkbox"/> Annually 7. <input type="checkbox"/> Biennially 8. <input type="checkbox"/> Other (describe) _____
17. Statistical methods Does this information collection employ statistical methods <input type="checkbox"/> Yes <input type="checkbox"/> No	18. Agency Contact (person who can best answer questions regarding the content of this submission) Name: _____ Phone: _____

19. Certification for Paperwork Reduction Act Submissions

On behalf of this Federal Agency, I certify that the collection of information encompassed by this request complies with 5 CFR 1320.9

NOTE: The text of 5 CFR 1320.9, and the related provisions of 5 CFR 1320.8(b)(3), appear at the end of the instructions. *The certification is to be made with reference to those regulatory provisions as set forth in the instructions.*

The following is a summary of the topics, regarding the proposed collection of information, that the certification covers:

- (a) It is necessary for the proper performance of agency functions;
- (b) It avoids unnecessary duplication;
- (c) It reduces burden on small entities;
- (d) It used plain, coherent, and unambiguous terminology that is understandable to respondents;
- (e) Its implementation will be consistent and compatible with current reporting and recordkeeping practices;
- (f) It indicates the retention period for recordkeeping requirements;
- (g) It informs respondents of the information called for under 5 CFR 1320.8(b)(3):
 - (i) Why the information is being collected;
 - (ii) Use of information;
 - (iii) Burden estimate;
 - (iv) Nature of response (voluntary, required for a benefit, mandatory);
 - (v) Nature and extent of confidentiality; and
 - (vi) Need to display currently valid OMB control number;
- (h) It was developed by an office that has planned and allocated resources for the efficient and effective management and use of the information to be collected (see note in Item 19 of instructions);
- (i) It uses effective and efficient statistical survey methodology; and
- (j) It makes appropriate use of information technology.

If you are unable to certify compliance with any of the provisions, identify the item below and explain the reason in Item 18 of the Supporting Statement.

Signature of Senior Official or designee

Date

Agency Certification (signature of Assistant Administrator or head of MB staff for L.O.s, or of the Director of a Program or Staff Office)	
Signature	Date
Signature of NOAA Clearance Officer	
Signature	Date

SUPPORTING STATEMENT FOR OMB CLEARANCE

Section A. Justification:

1. Section 4(d)¹ of the Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 et. seq.) requires the National Marine Fisheries Service (NMFS) to adopt such regulations as it “deems necessary and advisable to provide for the conservation of” threatened species. Those regulations may include any or all of the prohibitions provided in section 9(a)(1) of the ESA, which specifically prohibits “take” of any endangered species (“take” includes actions that harass, harm, pursue, kill, or capture). The first salmonid species listed by NMFS as threatened were protected by virtually blanket application of the section 9 take prohibitions. There are now 20 separate Evolutionarily Significant Units (ESUs) of west coast salmonids listed as threatened, covering a large percentage of the land base in California, Oregon, Washington and Idaho. NMFS is obligated to enact necessary and advisable protective regulations.

In current proposed 4(d) rules, NMFS makes section 9 prohibitions generally applicable to fourteen of those threatened ESUs, but also seeks to respond to requests from states and others to both provide more guidance on how to protect threatened salmonids and avoid take, and to limit the application of take prohibitions wherever warranted. The regulations describe 14 programs or circumstances that contribute to the conservation of, or are being conducted in a way that adequately limits impacts on, listed salmonids. The regulations do not apply the take prohibitions to those programs and circumstances. Certain of these 14 limits on the take prohibitions entail voluntary submission of a plan to NMFS and/or annual or occasional reports by entities wishing to take advantage of these limits, or continue within them.

Each of the 14 limits applies to a different sector of activity, and to different potential populations of responders. Those dealing with aiding sick or stranded salmonids, fish harvest, artificial propagation, scientific research, and habitat restoration are available only to a maximum of four states. The forest management limit is available only to the State of Washington. The City of Portland’s Pest Management Program involves only that city. Hence, any submission of plans or reports associated with those sectors of activity will not involve submission by 10 or more respondents. The sectors for which there might be 10 or more respondents annually include diversion screening, road maintenance, urban development, and tribal resource management plans. A brief description of each follows, and the burdens associated with each of these is discussed below (see ## 12-14).

¹ Section 4(d) of the Endangered Species Act, 16 U.S.C. et seq., states:

“Whenever any species is listed as a threatened species pursuant to subsection (c) of this section, the Secretary shall issue such regulations as he deems necessary and advisable to provide for the conservation of such species. The Secretary may by regulation prohibit with respect to any threatened species any act prohibited under section 9(a)(1)”

Diversion Screening Limit: Water diversion structures (gravity flow or pumps) that have not been screened to prevent fish from being injured or diverted into fields is a significant source of injury and mortality to listed salmonids, particularly to juveniles. State laws and Federal programs have long recognized these problems in varying ways, and encouraged or required adequate screening of diversion ditches, structures, and pumps to prevent much of the anadromous fish loss attributable to this cause. Nonetheless, large numbers of diversions are not adequately screened and elimination of that source of injury or death is vital to conservation of listed salmonids. The limit proposed in this rule should prompt diverters to move quickly to provide adequate screening or other protections for their diversions, because once so screened, take prohibitions would not apply. The diversion must be screened in accord with NMFS' Juvenile Fish Screening Criteria, Northwest Region, Revised February 16, 1995, with Addendum of May 9, 1996, or in California with NMFS' Southwest Region "Fish Screening Criteria for Anadromous Salmonids, January 1997" or any subsequent revision (available by contacting ADDRESSES). The operator would need to provide documentation for the screening installed, including plans, for a written acknowledgment from NMFS engineering staff that the screens are in compliance with the above criteria. There are no ongoing reporting requirements associated with this limit.

Routine Road Maintenance: Cities and counties in Oregon may elect to follow the Oregon Department of Transportation routine road maintenance guidance and seek to come within this limit on take prohibitions. The city or county would need to prepare an agreement detailing how it will assure adequate training and compliance with the ODOT guidance, and describing any dust abatement practices it wishes to be within the limit. There are no ongoing reporting requirements associated with this limit.

Urban Development: This limit would be available to any city or county affected by the take prohibitions, if it has land development ordinances in a sufficiently comprehensive form that they could satisfy the criteria set out in the regulation. The jurisdiction would need to provide NMFS with copies of those comprehensive ordinances, and provide any necessary explanatory materials showing how the ordinance meet those standards.

Once a jurisdiction's ordinances have been found adequate to be within a limit on take prohibitions, it would need to prepare an annual report, including gathering, reproducing, and submitting available water quality data, aerial photographs, storm water data, etc.

Tribal Resource Management Plans: This limit is available to tribes with the potential to manage resources affecting any of the 14 threatened salmonid ESUs. The Secretary will provide technical assistance in examining impacts on listed salmonids and other salmonids to any tribe that so requests, with respect to Tribal Plans developed by tribes to meet tribal management responsibilities and needs. If the Secretary determines that such a plan will not appreciably reduce the likelihood of survival and recovery of threatened salmonids, then activities in compliance with that plan will not be subject to the take prohibitions. The Secretary shall publish notice of any determination regarding a Tribal Plan, with a discussion of the biological analysis

underlying that determination, in the Federal Register. There are no ongoing reporting requirements associated with this limit.

Reports of Salmonids Assisted, Disposed of, or Salvaged: Employees or designees of certain State agencies, Tribes, or other governmental entities with co-management authority over listed species may, in the course of their duties, take a threatened salmonid if such an action is necessary: (1) to aid a sick, injured, or stranded salmonid, (2) to dispose of a dead salmonid, or (3) to salvage a dead salmonid for scientific study. Each agency acting under this limit on the take prohibition must annually report to NMFS on the numbers of fish handled and their status.

2. NMFS will review plans submitted to determine whether they provide sufficient biological protections to warrant not applying the take prohibitions to activities governed by that plan. NMFS' biologists will review the plans against the criteria associated with the applicable limit on take prohibitions. Those criteria have been carefully crafted to assure that plans meeting them will adequately limit impacts on threatened salmonids, such that additional protections in the form of a federal take prohibition are not necessary and advisable. The practical utility of these submissions is that, assuming a plan or program is found to meet the criteria associated with the particular limit in the 4(d) rule, the state or other entity submitting the plan, and individuals acting in compliance with the plan, can carry on with their activity knowing that they are in full compliance with the ESA and need not be concerned with any possibility of ESA enforcement.

The annual reporting associated with the urban development limit focuses on data that would be in the possession of the jurisdictions and would aid NMFS in understanding the cumulative impacts of development on habitat within the listed ESUs, and to determine whether additional protections are required to provide for the conservation of the species (or, alternatively, whether some additional limits on federal protections may be warranted).

The annual reporting associated with salmonids that were aided, disposed of, or salvaged provides NMFS with the numbers of threatened salmonids being affected by such actions. This information is necessary as part of the tracking of the status of the affected threatened species.

3. Any collection of information associated with these 4(d) rules is voluntary. There is no form involved. The rules do not require any particular method of submission of plans or reports; as a matter of course, any such information would be accepted in electronic form.

Because these 4(d) rules are not final and effective, NMFS has not yet processed any plans for approval as within one of the limits on take prohibitions. NMFS Northwest Region intends that decisions related to these submissions would be made available on our Northwest Region web site, which provides a broad array of information and maps related to ESA and salmonid issues. See www.nwr.noaa.gov.

4. NMFS has not identified any examples where these rule involve duplication with other collections of information. This information collection is unique. As NMFS gains experience

with this approach to 4(d) protections, it is likely that many of the plans or reports submitted may serve to relieve the take prohibitions for an even broader range of listed species.

5. None of these collections will have a significant economic impact on small entities. Any economic impact of these rules flows from the application of the take prohibition in the first instance, which has no associated collection of information.

6. If NMFS were not to provide the opportunity for entities to seek a limit on take prohibitions, those entities would in all cases remain subject to the take prohibitions. Before embarking on activity that may impact threatened salmonids, those entities would need to assess the risk of actual take, and determine whether to seek an ESA section 10 permit (incidental take permit). Unless the entity procured a section 10 permit (or the activity has some federal nexus and had been the subject of a completed ESA section 7 consultation), the entity would remain at risk of ESA enforcement for violation of the take prohibitions. Annual reporting on urban development programs is necessary to monitor the effectiveness of the protections provided. Less than annual reporting would hinder NMFS' ability to conserve listed species.

7. The collection is consistent with the guidelines.

8. Public comment on these information collections will be solicited in the proposed 4(d) rule Federal Register notice.

In crafting the proposed limits on take prohibitions, NMFS has worked with a subset of the potential users of those limits. For instance, fisheries biologists have discussed the criteria and processes for the limits related to fish harvest or artificial propagation with representatives of state fish and wildlife agencies.

9. No payments, gifts or remuneration are associated with these voluntary collections of information.

10. There are no assurances of confidentiality associated with these voluntary collections of information. The information supplied would be a matter of public record.

11. No sensitive questions are asked.

12. The following burden hour estimates are just that – estimates. These estimates can and will be adjusted based on comment received during the 60-day public review and comment period. Likewise, the numbers of entities seeking a limit on take prohibitions will be influenced by many factors unknown at this stage, including the status of other programs (e.g. diversion screening programs run by individual states), individual circumstances and risk assessments, and citizen reaction to this approach to ESA regulation.

Diversion Screening Limit: The estimated number of individuals or entities seeking this limit over the coming three years is 240 (an average of 20 per state per year). To come within this limit, a water diversion operator would need to assemble and reproduce documentation, including plans for the screening device installed (3 hours); submit that documentation to NMFS (1 hour); respond to any questions (1 hour). That is a one time process, amounting to 5 hours per respondent, or a total of 400 burden hours per year.

Routine Road Maintenance: This limit is available to cities (240) and counties (36) in Oregon. Most, but not all, of these are within the geography of one or more threatened salmonid ESUs. NMFS estimates that a maximum of 1/3 of these local governments may decide to follow the Oregon Department of Transportation guidance and seek to come within the limit on take prohibitions over the next three years. Each of those governmental units would need to prepare an agreement detailing how it will assure adequate training and compliance with the ODOT guidance, and describing any dust abatement practices it wishes to be within the limit. This process would include discussions with NMFS, drafting, and submittal of the agreement, estimated to require between 10 and 30 hours per jurisdiction, for an average of 20 hours. Thus, 1800 burden hours are potentially associated with this collection if an average of 30 jurisdictions were to submit in each of the first three years, with an annual average of 600 burden hours.

Urban Development: This limit would be available to any city or county in Washington, Idaho, Oregon, or California (1194 cities, 177 counties), a substantial proportion of which are within the geography of one or more threatened salmonid ESUs. NMFS estimates that over the next three years, no more than 5% of all local governments (70) will have ordinances in a sufficiently comprehensive form that they would choose to submit those to NMFS. Burden hours associated with reproducing, transmitting, and providing any necessary explanatory materials is estimated at approximately 30 hours per jurisdiction. Assuming an average of 23 jurisdictions submit each year, burden hours would average 690 per year.

Each of those governmental units once within a limit would need to prepare an annual report, including gathering water quality data, aerial photographs, storm water data, etc. as available; reproducing, and submitting. NMFS estimates approximately 10 burden hours per report for these functions. Assuming that 1/3 of the jurisdictions submit two annual reports in the next three years, and that 1/3 submits one, these 69 annual reports would involve 690 burden hours, or an average of 230 hours per year.

Tribal Resource Management Plans: This limit is available to tribes with the potential to manage resource affecting any of the 14 threatened salmonid ESUs. There are a maximum of 47 such tribes in the four affected states. Not all of these tribes are likely to elect to work with the Secretary on a government-to-government basis toward a determination that the take prohibitions would not apply to activities within a tribal resource management plan. NMFS estimates the reporting burden for this collection of information to average 20 hours per response for tribes that decide to provide one or more of their tribal resource management plans. This estimate includes any time required for reproducing, transmitting, and describing the content of the resource

management plan. Assuming that in the coming three years NMFS considers 24 tribal plans, the total burden hours for this sector would be 480 hours, with an annual average of 160 burden hours.

Reports of Aided, Disposed of, or Salvaged Salmonids: NMFS estimates that about 20 agencies or other entities will respond annually, and that it would take about 5 hours to collect and report the information, for an average annual burden of 100 hours.

13. There would be no known startup or capital costs associated with the collections described above. There would be some reproduction, shipping, and records management costs associated with each of the limits discussed in #12, above. For each diversion screening submission, these would average \$10.00 for reproduction of plans and explanations (\$3 per page of plans and \$0.10 per page of text), and \$4 for shipping. Assuming an average of 80 submissions per year, this would result in annual total O&M of \$1120 annually. Reproduction costs for road maintenance agreements would be minimal (maximum \$2 each), and mailing likewise (maximum \$2). Assuming an average of 30 submissions per year, total O&M costs would be \$120. Urban development ordinance packages could average as much as 500 pages each, for a reproduction cost of \$50 per package. Assuming a mailing cost of \$10 per package, an annual average of 23 submissions would total \$1,380. Annual reports would include an aerial photo and perhaps other graphic portrayals (\$10-20), plus up to 20 standard text pages. Assuming shipping cost of \$4, total per submission would be \$21, with an annual total of \$483. Assuming Tribal plans to average 300 pages, reproduction per plan would be \$30. If shipping were needed (these may well be available to the Secretary through some other government- to-government route) it would average no more than \$5 per plan, for an annual total for eight plans of \$280. Reports on aiding, disposing of, or salvaging salmon are smaller documents. Mailing and postage costs might be about \$1 a submission, for an annual total of \$20.

14. Costs to the federal government associated with these collections are the wage costs for biologists who will evaluate the submissions. These costs however would be incurred with or without the associated collections of information. Without the collection of information associated with these 4(d) regulations, NMFS biologists would deal with increased numbers of section 10 / HCP applications, enforcement situations, and requests for assistance to the public in determining risks of impacting threatened salmonids in the course of a variety of activities.

Cost to Public							
	Diversion Screening Submissions	Road Maintenance Agreements	Urban Development Ordinance Packages*	Urban Development Annual Reports *(same respondents)	Tribal Plans	Reports of Aided, etc., Salmonids	TOTALS
Annual # of Responses	80	30	23	23	8	20	184
Number of Hours per Response	5	20	30	10	20	5	
Total Hours (Annually)	400	600	690	230	160	100	2180
Cost per Response (@ \$18/hr)	\$90	\$360	\$540	\$180	\$360	\$90	
Burden Hour Costs (Annual)	\$7,200	\$10,800	\$12,420	\$4,140	\$2,880	\$1,800	\$39,240
O&M Costs (Annual)	\$1,120	\$120	\$1,380	\$483	\$280	\$20	\$3,403
Annual Total	\$8,320	\$10,920	\$13,800	\$4,623	\$3,160	\$1,820	\$42,643
Cost to Government							
Processing: Federal Government Hours per Response	15	20	80	20	40	5	
Total Annual Hours)	1200	600	1840	460	320	100	4,520
Cost per Response (@ \$18/hr)	\$270	\$360	\$1,440	\$360	\$720	\$90	
Total Annual Cost	\$21,600	\$10,800	\$33,120	\$8,280	\$5,760	\$1,800	\$81,360

15. These are new requirements, and therefore a program change.
16. There are no plans to publish the data. NMFS Northwest Region intends that decisions related to these submissions would be made available on our Northwest Region web site, which provides a broad array of information and maps related to ESA and salmonid issues. See www.nwr.noaa.gov. Decisions related to tribal plans will be published in the Federal Register.
17. Not seeking such approval.
18. There are no exceptions to the certification requirement. The submission does not indicate the retention period for record keeping requirements, since the rules do not specify any retention period.

Section B. Collections of Information Employing Statistical Methods

N/A - the collection will not employ statistical methods.